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Point Rouge; for Mira Bay, the line from the Light on the east point of Scatary Island to the northeasterly point of Cape Morien.

Long Island and Bryer Island, on St. Mary's Bay, in Nova Scotia, shall, for the purpose of delimitation, be taken as the coasts of such bays.

It is understood that the award does not cover Hudson Bay.

ARTICLE III

It is further agreed that the delimitation of all or any of the bays on the coast of Newfoundland, whether mentioned in the recommendations or not, does not require consideration at present.

ARTICLE IV

The present agreement shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty, and the ratifications shall be exchanged in Washington as soon as practicable.

In faith whereof the respective plenipotentiaries have signed this agreement in duplicate and have hereunto affixed their seals.

Done at Washington on the 20th day of July, one thousand nine hundred and twelve.

CHANDLER P. ANDERSON [SEAL.]

ALFRED MITCHELL INNES [SEAL.]

BRITISH NOTES OF JULY 8, 1912, AND NOVEMBER 14, 1912, CONCERNING PANAMA CANAL TOLLS

Chargé Innes to the Secretary of State

BRITISH EMBASSY

KINEO, MAINE.

July 8, 1912.

SIR,

The attention of His Majesty's Government has been called to the various proposals that have from time to time been made for the purpose of relieving American shipping from the burden of the tolls to be levied

on vessels passing through the Panama Canal, and these proposals together with the arguments that have been used to support them have been carefully considered with a view to the bearing on them of the provisions of the treaty between the United States and Great Britain of November 18th, 1901.

The proposals may be summed up as follows: —

- (1). To exempt all American shipping from the tolls,
- (2). To refund to all American ships the tolls which they may have paid,
- (3). To exempt American ships engaged in the coastwise trade,
- (4). To repay the tolls to American ships engaged in the coastwise trade.

The proposal to exempt all American shipping from the payment of the tolls, would, in the opinion of His Majesty's Government, involve an infraction of the treaty, nor is there, in their opinion any difference in principle between charging tolls only to refund them and remitting tolls altogether. The result is the same in either case, and the adoption of the alternative method of refunding the tolls in preference to that of remitting them, while perhaps complying with the letter of the treaty, would still contravene its spirit.

It has been argued that a refund of the tolls would merely be equivalent to a subsidy and that there is nothing in the Hay-Pauncefote treaty which limits the right of the United States to subsidise its shipping. It is true that there is nothing in that treaty to prevent the United States from subsidising its shipping and if it granted a subsidy His Majesty's Government could not be in a position to complain. But there is a great distinction between a general subsidy, either to shipping at large or to shipping engaged in any given trade, and a subsidy calculated particularly with reference to the amount of user of the Canal by the subsidised lines or vessels. If such a subsidy were granted it would not, in the opinion of His Majesty's Government, be in accordance with the obligations of the Treaty.

As to the proposal that exemption shall be given to vessels engaged in the coastwise trade, a more difficult question arises. If the trade should be so regulated as to make it certain that only bona-fide coastwise traffic which is reserved for United States vessels would be benefited by this exemption, it may be that no objection could be taken. But it appears to my government that it would be impossible to frame regulations which would prevent the exemption from resulting, in fact, in a

preference to United States shipping and consequently in an infraction of the Treaty.

I have the honour to be,

With the highest consideration,

Sir,

Your most obedient, humble Servant,

A. MITCHELL INNES.

*The Secretary of State for Foreign Affairs of Great Britain to
Ambassador Bryce*

[Handed to the Secretary of State by the British Ambassador December 9, 1912.]

FOREIGN OFFICE, *November 14, 1912.*

SIR,

Your Excellency will remember that on the 8th July, 1912, Mr. Mitchell Innes communicated to the Secretary of State the objections which His Majesty's Government entertained to the legislation relating to the Panama Canal, which was then under discussion in Congress, and that on the 27th August, after the passing of the Panama Canal Act and the issue of the President's memorandum on signing it, he informed Mr. Knox that when His Majesty's Government had had time to consider fully the Act and the memorandum a further communication would be made to him.

Since that date the text of the Act and the memorandum of the President have received attentive consideration at the hands of His Majesty's Government. A careful study of the President's memorandum has convinced me that he has not fully appreciated the British point of view, and has misunderstood Mr. Mitchell Innes' note of the 8th July. The President argues upon the assumption that it is the intention of His Majesty's Government to place upon the Hay-Pauncefote treaty an interpretation which would prevent the United States from granting subsidies to their own shipping passing through the Canal, and which would place them at a disadvantage as compared with other nations. This is not the case; His Majesty's Government regard equality of all nations as the fundamental principle underlying the treaty of 1901 in the same way that it was the basis of the Suez Canal Convention of 1888, and they do not seek to deprive the United States of any liberty which is open either to themselves or to any other nation; nor do they

find either in the letter or in the spirit of the Hay-Pauncefote treaty any surrender by either of the contracting Powers of the right to encourage its shipping or its commerce by such subsidies as it may deem expedient.

The terms of the President's memorandum render it essential that I should explain in some detail the view which His Majesty's Government take as to what is the proper interpretation of the treaty, so as to indicate the limitations which they consider it imposes upon the freedom of action of the United States, and the points in which the Panama Canal Act, as enacted, infringes what His Majesty's Government hold to be their treaty rights.

The Hay-Pauncefote Treaty does not stand alone; it was the corollary of the Clayton-Bulwer Treaty of 1850. The earlier treaty was, no doubt, superseded by it, but its general principle, as embodied in article 8, was not to be impaired. The object of the latter treaty is clearly shown by its preamble; it was "to facilitate the construction of a ship canal to connect the Atlantic and Pacific oceans by whatever route may be deemed expedient, and to that end to remove any objection which may arise out of the Clayton-Bulwer Treaty to the construction of such canal under the auspices of the Government of the United States, without impairing the general principle of neutralization established in article 8 of that convention." It was upon that footing, and upon that footing alone, that the Clayton-Bulwer Treaty was superseded.

Under that treaty both parties had agreed not to obtain any exclusive control over the contemplated ship canal, but the importance of the great project was fully recognized, and therefore the construction of the canal by others was to be encouraged, and the canal when completed was to enjoy a special measure of protection on the part of both the contracting parties.

Under article 8 the two Powers declared their desire, in entering into the Convention, not only to accomplish a particular object, but also to establish a general principle, and therefore agreed to extend their protection to any practicable trans-isthmian communication, either by canal or railway, and either at Tehuantepec or Panama, provided that those who constructed it should impose no other charges or conditions of traffic than the two Governments should consider just and equitable, and that the canal or railway, "being open to the subjects and citizens of Great Britain and the United States on equal terms, should also be open to the subjects of any other State which was willing to join in the guarantee of joint protection."

So long as the Clayton-Bulwer Treaty was in force, therefore, the position was that both parties to it had given up their power of independent action, because neither was at liberty itself to construct the Canal and thereby obtain the exclusive control which such construction would confer. It is also clear that if the Canal had been constructed while the Clayton-Bulwer Treaty was in force, it would have been open, in accordance with article 8, to British and United States ships on equal terms, and equally clear, therefore, that the tolls leviable on such ships would have been identical.

The purpose of the United States in negotiating the Hay-Pauncefote Treaty was to recover their freedom of action, and obtain the right, which they had surrendered, to construct the Canal themselves; this is expressed in the preamble to the treaty, but the complete liberty of action consequential upon such construction was to be limited by the maintenance of the general principle embodied in article 8 of the earlier treaty. That principle, as shown above, was one of equal treatment for both British and United States ships, and a study of the language of article 8 shows that the word "neutralisation," in the preamble of the later treaty, is not there confined to belligerent operations, but refers to the system of equal rights for which article 8 provides.

If the wording of the article is examined, it will be seen that there is no mention of belligerent action in it at all. Joint protection and equal treatment are the only matters alluded to, and it is to one, or both, of these that neutralisation must refer. Such joint protection has always been understood by His Majesty's Government to be one of the results of the Clayton-Bulwer Treaty of which the United States was most anxious to get rid, and they can scarcely therefore believe that it was such joint protection that the United States were willing to keep alive, and to which they referred in the preamble of the Hay-Pauncefote Treaty. It certainly was not the intention of His Majesty's Government that any responsibility for the protection of the Canal should attach to them in the future. Neutralisation must therefore refer to the system of equal rights.

It thus appears from the preamble that the intention of the Hay-Pauncefote Treaty was that the United States was to recover the right to construct the trans-isthmian canal upon the terms that, when constructed, the canal was to be open to British and United States ships on equal terms.

The situation created was in fact identical with that resulting from

the Boundary Waters Treaty of 1909 between Great Britain and the United States, which provided as follows:—

The high contracting parties agree that the navigation of all navigable boundary waters shall for ever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally, subject, however, to any laws and regulations of either country, within its own territory, not inconsistent with such privilege of free navigation, and applying equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries.

It is further agreed that so long as this treaty shall remain in force this same right of navigation shall extend to the waters of Lake Michigan and to all canals connecting boundary waters and now existing, or which may hereafter be constructed on either side of the line. Either of the high contracting parties may adopt rules and regulations governing the use of such canals within its own territory, and may charge tolls for the use thereof; but all such rules and regulations and all tolls charged shall apply alike to the subjects or citizens of the high contracting parties, and they * * * shall be placed on terms of equality in the use thereof.

A similar provision, though more restricted in its scope, appears in Article 27 of the Treaty of Washington, 1871, and Your Excellency will no doubt remember how strenuously the United States protested, as a violation of equal rights, against a system which Canada had introduced of a rebate of a large portion of the tolls on certain freight on the Welland Canal, provided that such freight was taken as far as Montreal, and how in the face of that protest the system was abandoned.

The principle of equality is repeated in article 3 of the Hay-Pauncefote Treaty, which provides that the United States adopts, as the basis of the neutralisation of the Canal, certain rules, substantially as embodied in the Suez Canal Convention. The first of these rules is that the Canal shall be free and open to the vessels of commerce and war of all nations observing the rules on terms of entire equality, so that there shall be no discrimination against any such nation.

The word “neutralisation” is no doubt used in article 3 in the same sense as in the preamble, and implies subjection to the system of equal rights. The effect of the first rule is therefore to establish the provision, foreshadowed by the preamble and consequent on the maintenance of the principle of article 8 of the Clayton-Bulwer Treaty, that the Canal is to be open to British and United States vessels on terms of entire equality. It also embodies a promise on the part of the United States that the ships of all nations which observe the rules will be admitted to similar privileges.

The President in his memorandum treats the words “all nations” as

excluding the United States. He argues that, as the United States is constructing the Canal at its own cost on territory ceded to it, it has, unless it has restricted itself, an absolute right of ownership and control, including the right to allow its own commerce the use of the Canal upon such terms as it sees fit, and that the only question is whether it has by the Hay-Pauncefote Treaty deprived itself of the exercise of the right to pass its own commerce free or remit tolls collected for the use of the Canal. He argues that article 3 of the treaty is nothing more than a declaration of policy by the United States that the Canal shall be neutral and all nations treated alike and no discrimination made against any one of them observing the rules adopted by the United States. "In other words, it was a conditional favoured-nation treatment, the measure of which, in the absence of express stipulations to that effect, is not what the country gives to its own nationals, but the treatment it extends to other nations."

For the reasons they have given above His Majesty's Government believe this statement of the case to be wholly at variance with the real position. They consider that by the Clayton-Bulwer Treaty the United States had surrendered the right to construct the Canal, and that by the Hay-Pauncefote treaty they recovered that right upon the footing that the Canal should be open to British and United States vessels upon terms of equal treatment.

The case cannot be put more clearly than it was put by Mr. Hay himself, who, as Secretary of State, negotiated the Hay-Pauncefote Treaty, in the full account of the negotiations which he sent to the Senate Committee on Foreign Relations (see Senate Document No. 746, 61st Congress, 3rd session): —

These rules are adopted in the treaty with Great Britain as a consideration for getting rid of the Clayton-Bulwer Treaty.

If the rules set out in the Hay-Pauncefote Treaty secure to Great Britain no more than most-favoured-nation treatment, the value of the consideration given for superseding the Clayton-Bulwer Treaty is not apparent to His Majesty's Government. Nor is it easy to see in what way the principle of article 8 of the Clayton-Bulwer treaty, which provides for equal treatment of British and United States ships, has been maintained.

I notice that in the course of the debate in the Senate on the Panama Canal Bill the argument was used by one of the speakers that the third-

fourth, and fifth rules embodied in article 3 of the treaty show that the words "all nations" cannot include the United States, because, if the United States were at war, it is impossible to believe that it could be intended to be debarred by the treaty from using its own territory for revictualling its war-ships or landing troops.

The same point may strike others who read nothing but the text of the Hay-Pauncefote Treaty itself, and I think it is therefore worth while that I should briefly show that this argument is not well founded.

The Hay-Pauncefote Treaty of 1901 aimed at carrying out the principle of the neutralisation of the Panama Canal by subjecting it to the same régime as the Suez Canal. Rules 3, 4, and 5 of article 3 of the treaty are taken almost textually from articles 4, 5, and 6 of the Suez Canal Convention of 1888. At the date of the signature of the Hay-Pauncefote Treaty the territory, on which the Isthmian Canal was to be constructed, did not belong to the United States, consequently there was no need to insert in the draft treaty provisions corresponding to those in articles 10 and 13 of the Suez Canal Convention, which preserve the sovereign rights of Turkey and of Egypt, and stipulate that articles 4 and 5 shall not affect the right of Turkey, as the local sovereign, and of Egypt, within the measure of her autonomy, to take such measures as may be necessary for securing the defence of Egypt and the maintenance of public order, and, in the case of Turkey, the defence of her possessions on the Red Sea.

Now that the United States has become the practical sovereign of the Canal, His Majesty's Government do not question its title to exercise belligerent rights for its protection.

For these reasons, His Majesty's Government maintain that the words "all nations" in rule 1 of article 3 of the Hay-Pauncefote Treaty include the United States, and that, in consequence, British vessels using the Canal are entitled to equal treatment with those of the United States, and that the same tolls are chargeable on each.

This rule also provides that the tolls should be "just and equitable." The purpose of these words was to limit the tolls to the amount representing the fair value of the services rendered, i. e., to the interest on the capital expended and the cost of the operation and maintenance of the Canal. Unless the whole volume of shipping which passes through the Canal, and which all benefits equally by its services, is taken into account, there are no means of determining whether the tolls chargeable upon a vessel represent that vessel's fair proportion of the current ex-

penditure properly chargeable against the Canal, that is to say, interest on the capital expended in construction, and the cost of operation and maintenance. If any classes of vessels are exempted from tolls in such a way that no receipts from such ships are taken into account in the income of the Canal, there is no guarantee that the vessels upon which tolls are being levied are not being made to bear more than their fair share of the upkeep. Apart altogether, therefore, from the provision in rule 1 about equality of treatment for all nations, the stipulation that the tolls shall be just and equitable, when rightly understood, entitles His Majesty's Government to demand, on behalf of British shipping, that all vessels passing through the Canal, whatever their flag or their character, shall be taken into account in fixing the amount of the tolls.

The result is that any system by which particular vessels or classes of vessels were exempted from the payment of tolls would not comply with the stipulations of the treaty that the Canal should be open on terms of entire equality, and that the charges should be just and equitable.

The President, in his memorandum, argues that if there is no difference, as stated in Mr. Mitchell Innes' note of the 8th July, between charging tolls only to refund them and remitting tolls altogether, the effect is to prevent the United States from aiding its own commerce in the way that all other nations may freely do. This is not so. His Majesty's Government have no desire to place upon the Hay-Pauncefote Treaty an interpretation which would impose upon the United States any restriction from which other nations are free, or reserve to such other nation any privilege which is denied to the United States. Equal treatment, as specified in the treaty, is all they claim.

His Majesty's Government do not question the right of the United States to grant subsidies to United States shipping generally, or to any particular branches of that shipping, but it does not follow therefore that the United States may not be debarred by the Hay-Pauncefote Treaty from granting a subsidy to certain shipping in a particular way, if the effect of the method chosen for granting such subsidy would be to impose upon British or other foreign shipping an unfair share of the burden of the upkeep of the Canal, or to create a discrimination in respect of the conditions or charges of traffic, or otherwise to prejudice rights secured to British shipping by this Treaty.

If the United States exempt certain classes of ships from the payment of tolls the result would be a form of subsidy to those vessels which

His Majesty's Government consider the United States are debarred by the Hay-Pauncefote Treaty from making.

It remains to consider whether the Panama Canal Act, in its present form, conflicts with the treaty rights to which His Majesty's Government maintain they are entitled.

Under section 5 of the Act the President is given, within certain defined limits, the right to fix the tolls, but no tolls are to be levied upon ships engaged in the coastwise trade of the United States, and the tolls, when based upon net registered tonnage for ships of commerce, are not to exceed 1 dollar 25 c. per net registered ton, nor be less, *other than for vessels of the United States and its citizens*, than the estimated proportionate cost of the actual maintenance and operation of the Canal. There is also an exception for the exemptions granted by article 19 of the Convention with Panama of 1903.

The effect of these provisions is that vessels engaged in the coastwise trade will contribute nothing to the upkeep of the Canal. Similarly vessels belonging to the Government of the Republic of Panama will, in pursuance of the treaty of 1903, contribute nothing to the upkeep of the Canal. Again, in the cases where tolls are levied, the tolls in the case of ships belonging to the United States and its citizens may be fixed at a lower rate than in the case of foreign ships, and may be less than the estimated proportionate cost of the actual maintenance and operation of the Canal.

These provisions (1) clearly conflict with the rule embodied in the principle established in article 8 of the Clayton-Bulwer Treaty of equal treatment for British and United States ships, and (2) would enable tolls to be fixed which would not be just and equitable, and would therefore not comply with rule 1 of article 3 of the Hay-Pauncefote Treaty.

It has been argued that as the coastwise trade of the United States is confined by law to United States vessels, the exemption of vessels engaged in it from the payment of tolls cannot injure the interests of foreign nations. It is clear, however, that the interests of foreign nations will be seriously injured in two material respects.

In the first place, the exemption will result in the cost of the working of the Canal being borne wholly by foreign-going vessels, and on such vessels, therefore, will fall the whole burden of raising the revenue necessary to cover the cost of working and maintaining the Canal. The possibility, therefore, of fixing the toll on such vessels at a lower figure

than 1 dol. 25 c. per ton, or of reducing the rate below that figure at some future time, will be considerably lessened by the exemption.

In the second place, the exemption will, in the opinion of His Majesty's Government, be a violation of the equal treatment secured by the treaty, as it will put the "coastwise trade" in a preferential position as regards other shipping. Coastwise trade cannot be circumscribed so completely that benefits conferred upon it will not affect vessels engaged in the foreign trade. To take an example, if cargo intended for an United States port beyond the Canal, either from east or west, and shipped on board a foreign ship could be sent to its destination more cheaply, through the operation of the proposed exemption, by being landed at an United States port before reaching the Canal, and then sent on as coastwise trade, shippers would benefit by adopting this course in preference to sending the goods direct to their destination through the Canal on board the foreign ship.

Again, although certain privileges are granted to vessels engaged in an exclusively coastwise trade, His Majesty's Government are given to understand that there is nothing in the laws of the United States which prevents any United States ship from combining foreign commerce with coastwise trade, and consequently from entering into direct competition with foreign vessels while remaining "prima facie" entitled to the privilege of free passage through the Canal. Moreover any restriction which may be deemed to be now applicable might at any time be removed by legislation or even perhaps by mere changes in the regulations.

In these and in other ways foreign shipping would be seriously handicapped, and any adverse result would fall more severely on British shipping than on that of any other nationality.

The volume of British shipping which will use the Canal will in all probability be very large. Its opening will shorten by many thousands of miles the waterways between England and other portions of the British Empire, and if on the one hand it is important to the United States to encourage its mercantile marine and establish competition between coastwise traffic and transcontinental railways, it is equally important to Great Britain to secure to its shipping that just and impartial treatment to which it is entitled by treaty, and in return for a promise of which it surrendered the rights which it held under the earlier convention.

There are other provisions of the Panama Canal Act to which the attention of His Majesty's Government has been directed. These are

contained in section 11, part of which enacts that a railway company, subject to the Inter-State Commerce Act of 1887, is prohibited from having any interest in vessels operated through the Canal with which such railways may compete, and another part provides that a vessel permitted to engage in the coastwise or foreign trade of the United States is not allowed to use the Canal if its owner is guilty of violating the Sherman Anti-Trust Act.

His Majesty's Government do not read this section of the Act as applying to, or affecting, British ships, and they therefore do not feel justified in making any observations upon it. They assume that it applies only to vessels flying the flag of the United States, and that it is aimed at practices which concern only the internal trade of the United States. If this view is mistaken and the provisions are intended to apply under any circumstances to British ships, they must reserve their right to examine the matter further and to raise such contentions as may seem justified.

His Majesty's Government feel no doubt as to the correctness of their interpretation of the treaties of 1850 and 1901, and as to the validity of the rights they claim under them for British shipping; nor does there seem to them to be any room for doubt that the provisions of the Panama Canal Act as to tolls conflict with the rights secured to their shipping by the treaty. But they recognize that many persons of note in the United States, whose opinions are entitled to great weight, hold that the provisions of the Act do not infringe the conventional obligations by which the United States is bound, and under these circumstances they desire to state their perfect readiness to submit the question to arbitration if the Government of the United States would prefer to take this course. A reference to arbitration would be rendered unnecessary if the Government of the United States should be prepared to take such steps as would remove the objections to the Act which His Majesty's Government have stated.

Knowing as I do full well the interest which this great undertaking has aroused in the New World and the emotion with which its opening is looked forward to by United States citizens, I wish to add before closing this despatch that it is only with great reluctance that His Majesty's Government have felt bound to raise objection on the ground of treaty rights to the provisions of the Act. Animated by an earnest desire to avoid points which might in any way prove embarrassing to the United States, His Majesty's Government have confined their objections within

the narrowest possible limits, and have recognized in the fullest manner the right of the United States to control the Canal. They feel convinced that they may look with confidence to the Government of the United States to ensure that in promoting the interests of United States shipping, nothing will be done to impair the safeguards guaranteed to British shipping by treaty.

Your Excellency will read this despatch to the Secretary of State and will leave with him a copy.

I am, &c.,

E. GREY.

TREATY OF PEACE BETWEEN ITALY AND TURKEY ¹

Signed at Lausanne, October 18, 1912

His Majesty the King of Italy and His Majesty the Emperor of the Ottomans, equally animated by the desire to bring to an end the state of war existing between the two countries, have appointed as their plenipotentiaries:

His Majesty the King of Italy:

Mr. Pietro Bertolini, Grand-Cross of the Order of the Crown of Italy, Grand-officer of the Order of Saints Maurice and Lazarus, deputy of Parliament,

Mr. Guido Fusinato, Grand-Cross of the Order of the Crown of Italy, Grand-Officer of the Order of Saints Maurice and Lazarus, deputy of Parliament, Counsellor of State,

Mr. Giuseppe Volpi, Commander of the Order of Saints Maurice and Lazarus and of the Crown of Italy.

His Majesty the Emperor of the Ottomans:

His Excellency Mehemed Naby Bey, Grand-Cordon of the Imperial Order of Osmaniè, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the Emperor of the Ottomans,

His Excellency Roumboyoglou Fahreddin Bey, Grand-Officer of the Imperial Order of Medjidiè, Commander of the Imperial Order of Osmaniè, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the Emperor of the Ottomans,

Who, after having communicated to each other their respective full powers which were found in good and due form, have agreed upon the following articles:

¹ Translated from the *Gazzetta Ufficiale del Regno D' Italia*, October 19, 1912.